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APR 23 1998

GOVERNMENTAL INQUIRY
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April 20, 1998

RQ-1129

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APR 27 1998

Opinion Committee

The Honorable Dan Morales
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711

Request for Attorney General's Opinion

RE: Use of City of League City Section 4B Industrial Development Corporation Sales Tax Revenues for Maintenance and Operation of Projects

Dear Attorney General Morales:

As the State Senator for the area encompassing the City of League City, Texas, and Chairman of the Senate Committee on Veteran Affairs and Military Installations, I have been asked to seek the opinion of your Office regarding the use of funds received by League City pursuant to Section 4B of the Development Corporation Act of 1979.

Section 4B provides, in part, as follows:

The costs of a publicly owned and operated project that is purchased or constructed under this section include the maintenance and operating costs of the project, and the proceeds of taxes may be used to pay the maintenance and operating costs of a project, **unless within 60 days after first publishing notice of this specific use of the proceeds of the taxes** the governing body of the city receives a petition from more than 10 percent of the registered voters of the city where the petition requests that an election be held before the proceeds of the taxes imposed under this section may be used to pay the maintenance and operating costs of the project. An election is not required to be held after the submission of a petition **if the qualified citizens of the city have previously approved that the costs of a publicly owned and operated project purchased or constructed under this section include the maintenance and operating costs of the project and that the proceeds of taxes may be used to pay the maintenance and operating costs of a project**, at an election called for that purpose by the governing body of the city or in conjunction with another election required to be held under this section. . . .

TEX. REV. CIV. STAT. ANN. art. 5190.6, § 4B(2)(B)(a-2) (Vernon Supp. 1997) (emphasis added).

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It appears from the emphasized portions of this above-quoted subparagraph that for League City to use its 4B tax proceeds to cover maintenance and operating costs of a "project," it would have to (i) publish notice of "this specific use of the proceeds" and (ii) submit that proposed use to the voters at an election. This belief is confirmed by reference to *The Attorney General's Handbook on Economic Development Laws for Texas Cities*, which your office published in 1996. According to the handbook's interpretation of the Development Corporation Act, the tax revenues generated through Section 4B corporations may only be used for the specific purposes stated in the ballot:

Current law does not provide any required wording for the ballot for a Section 4B sales tax for economic development. Nonetheless, cities should use great care to include wording that describes all of the categories of projects that may be pursued by the industrial development corporation. For example, if a city includes only "the promotion of industrial and manufacturing programs and the development of city parks" in its ballot proposition, the city will be able to expend the 4B tax to accomplish only these two purposes.

There is no statutory authorization for later broadening the purposes for which a Section 4B tax may be used. Accordingly, a city should specify each type of project authorized under Section 4B of the Act that may be of interest to the city currently and in the future.

In addition, the city should consider including a provision in the wording of the Section 4B ballot that would allow the expenditure of the 4B tax proceeds on the "maintenance and operations expenses for any of the above described projects." Including such a provision will allow the Section 4B tax proceeds to be used for the upkeep and day-to-day costs of any public facilities or programs undertaken with the Section 4B tax.

In League City's case, the Petition for Creation of an Industrial Development Corporation of the City of League City, Texas (the "Corporation") requested the creation of the Corporation to accomplish the purposes authorized by Section 4B of the Development Corporation Act, "*including, but not limited to, the promotion and development of amateur sports complexes.*" (Emphasis added). The City Council thereupon approved an ordinance relating to the formation of a corporation pursuant to Section 4B. Ordinance 94-54 broadly defined the purposes for which the one-quarter percent sales tax was to be used by authorizing the creation of the Corporation to accomplish the purposes authorized by Section 4B, "*including, but not limited to, the promotion and development of amateur sports complexes.*" (Emphasis added). In addition, the bylaws adopted by the Corporation state that it is to accomplish the purposes authorized by Section 4B of the Development Corporation Act, and specifically provide that the Corporation is "organized to establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, *repair, operate or maintain* (any or all) improvements necessary or desirable to the promotion, development *and maintenance* of projects authorized by the Act."

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At the special election held in League City on May 7, 1994, the following proposition was presented to the voters:

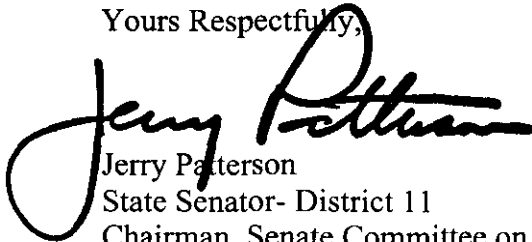
Shall the City of League City, Texas, be authorized to levy a sales tax of one-fourth ($\frac{1}{4}$) of one percent within the City as authorized by Section 4B, Tex. Rev. Civ. Stat. Ann. art. 5190.6, as amended, for the benefit of an industrial development corporation of the City to be created, for the promotion and development of amateur sports facilities, including the costs of amateur sports facilities and the payment of the principal of, interest on, and other costs related to the bonds or other obligations issued by the industrial development corporation to pay the costs of amateur sports facilities

....

On March 27, 1998, I attended the official opening of the League City Sportsplex, a 41-acre amateur sports complex completed with tax revenues earned by the Corporation. The single question for your Office is whether the Corporation can utilize any of the tax proceeds it is receiving pursuant to Section 4B for the maintenance and operation of the Sportsplex or of other projects the Corporation undertakes. Out of an abundance of caution, because the ballot language presented to the voters in 1994 to authorize projects such as the Sportsplex did not make any specific mention of maintenance and operations, League City itself — rather than the Corporation — is currently bearing those on-going costs.

I look forward to your opinion on this matter. If you have any questions or need further clarification, please do not hesitate to contact me or Mr. Nicholas Finan, City Administrator of League City.

Yours Respectfully,



Jerry Patterson
State Senator- District 11
Chairman, Senate Committee on Veteran Affairs & Military Installations

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cc: Mr. Nicholas Finan
City Administrator
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League City, Texas 77573

Ms. Pam Beyer
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